

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: VEHICLE CARRIER SERVICES  
ANTITRUST LITIGATION**

*This Document Relates To All Indirect-  
Purchaser Actions*

**Master Docket No. 13-cv-3306**

**(MDL No. 2471)**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONSE TO DEFENDANTS’  
MOTION TO DISMISS INDIRECT-PURCHASER ACTIONS**

End-Payor Plaintiffs (“Plaintiffs”) respectfully request that, in connection with the Court’s consideration of the defendants’ pending motions to dismiss, the Court take judicial notice of documents filed and/or published by the Antitrust Division of the United States Department of Justice (“Antitrust Division”) in *United States of America v. Compania Sud Americana de Vapores S.A.*, Case No. 1:14-cr-00100-GLR (the “CSAV Criminal Action”), and *United States of America v. Kawasaki Kisen Kaisha, Ltd.*, Case No. 1:14-cr-00449-GLR (the “K Line Criminal Action”), both pending in the District of Maryland.

True and correct copies of the documents for which Plaintiffs seek judicial notice are attached to this request as exhibits “A” through “G”:

- Exhibit A:** CSAV Criminal Action Information
- Exhibit B:** CSAV Criminal Action Press Release
- Exhibit C:** CSAV Criminal Action Plea Agreement
- Exhibit D:** CSAV Criminal Action Sentencing Transcript
- Exhibit E:** K Line Criminal Action Information
- Exhibit F:** K Line Criminal Action Press Release
- Exhibit G:** K Line Criminal Action Plea Agreement

The grounds for this request are as follows:

1. Plaintiffs have asserted claims against, *inter alia*, defendants Compania Sud Americana de Vapores S.A. (“CSAV”) and Kawasaki Kisen Kaisha, Ltd. (“K Line”), for violations of the Sherman Antitrust Act, 15 U.S.C. § 1, and related state-law antitrust and consumer-protection statutes arising from the defendants’ provision of international ocean shipping services for roll-on, roll-off cargo.

2. On February 27, 2014, the Antitrust Division filed an Information in the District of Maryland charging defendant CSAV with violation of the Sherman Antitrust Act. *See* Ex. A, *CSAV* Criminal Action Information.

3. The same day, the Antitrust Division published a press release, “South American Company Agrees To Plead Guilty To Price Fixing On Ocean Shipping Services For Cars and Trucks,” announcing the Antitrust Division’s filing of the of the Information, as well as defendant CSAV’s agreement to plead guilty to the charge and pay a \$8.9 million criminal fine, subject to court approval. *See* Ex. B., *CSAV* Criminal Action Press Release. In the press release, Assistant Attorney General in charge of the Antitrust Division, Bill Baer, stated, “Today’s charges are the first to be filed in the Antitrust Division’s investigation into bid rigging and price fixing of ocean shipping services.” *Id.*

4. On April 24, 2014, defendant CSAV entered a plea of guilty in the *CSAV* Criminal Action. Specifically, defendant CSAV pleaded guilty to having “participated in a conspiracy among ocean carriers of roll-on, roll-off cargo, the primary purpose of which was to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for international ocean shipping services for roll-on, roll-off cargo, such as cars and trucks, to and from the United States and elsewhere, in violation of the Sherman Antitrust Act.” Ex. C., *CSAV* Criminal Action Plea Agreement, ¶ 4(b).

5. On May 1, 2014, the Honorable George Levi Russell, III, United States District Judge, held a sentencing hearing in the *CSAV* Criminal Action in which the court accepted the terms of the plea agreement, which do not provide for restitution. Judge Russell stated: “Further, although restitution is not being ordered directly, based upon the representations of the

parties, there are numerous civil cases related to the same conduct, and that the disposition of those civil cases is being handled appropriately, without the necessity for a specific order of restitution.” Ex. D, *CSAV Criminal Action Sentencing Tr.*, p.30, lines 2 – 7.

6. On September 26, 2014, the Antitrust Division filed an Information in the District of Maryland charging defendant K Line with violation of the Sherman Antitrust Act. *See* Ex. E, *K Line Criminal Action Information*.

7. The same day, the Antitrust Division published a press release, “Japanese Company Agrees to Plead Guilty to Price Fixing on Ocean Shipping Services for Cars and Trucks,” announcing the Antitrust Division’s filing of the Information, as well as defendant K Line’s agreement to plead guilty to the charge and pay a \$67.7 million criminal fine, subject to court approval. *See* Ex. F, *K Line Criminal Action Press Release*. The Antitrust Division stated in the press release that, “Today’s charge is the result of an ongoing federal antitrust investigation into price fixing, bid rigging, and other anticompetitive conduct in the international roll-on, roll-off ocean shipping industry.” *Id.*

8. On November 5, 2014, defendant K Line entered a plea of guilty in the *K Line Criminal Action*. *See* Ex. G, *K Line Criminal Action Plea Agreement*. Specifically, defendant K Line pleaded guilty to “participating in a combination and conspiracy, starting from at least as early as February 1997 and continuing until at least September 2012, to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for international ocean shipping services for roll-on, roll-off cargo, such as cars and trucks, to and from the United States and elsewhere, in violation of the Sherman Antitrust Act.” *Id.* at ¶ 2.

a. Furthermore, the Antitrust Division and defendant Kawasaki Kisen Kaisha, Ltd. agreed that, “[i]n light of the civil cases filed against the defendant, which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information.” *Id.* at ¶ 9(b).

b. Also, the Antitrust Division agreed that, with respect to its decision not to seek criminal charges against current or former employees other than those individuals

specifically carved out, “[t]he non-prosecution terms of this paragraph do not apply to civil matters of any kind.” *Id.* at ¶ 16(f).

9. When deciding a motion to dismiss, the Court may consider the allegations of the complaint, as well as “items subject to judicial notice” and “matters of public record.” *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3rd Cir. 2006). *See also Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd.*, 181 F.3d 410, 426 (3rd Cir. 1999) (“To resolve a 12(b)(6) motion, a court may properly look at public records, including judicial proceedings, in addition to the allegations in the complaint.”).

10. It is well-established that a defendant’s guilty plea and related filings are a proper subject of judicial notice in civil proceedings. *See, e.g., Matter of American Biomaterials Corp.*, 954 F.2d 919, 922 (3rd Cir. 1992) (“We take judicial notice of their guilty pleas in affirming the district court’s finding that MacKay and Russell were embezzling from American.”); *United States ex rel. Martinez v. Alldredge*, 468 F.2d 684, 686 n.2 (3rd Cir. 1972) (“Here the facts of Martinez’s arrest, guilty plea and conviction, were matters of public record, of which a court may take judicial notice.”); *Township of S. Fayette v. Allegheny County Housing*, 27 F. Supp. 2d 582, 594 (W.D. Pa. 1998) (on a motion to dismiss, court may take judicial notice of “publicly available records and transcripts from judicial proceedings ‘in related or underlying cases which have a direct relation to the matters at issue.’”), *aff’d*, 185 F.3d 853 (3rd Cir. 1999); *see also Biggs v. Terhune*, 334 F.3d 910, 916 n.3 (9th Cir. 2003) (taking judicial notice of hearing transcript, because “[m]aterials from a proceeding in another tribunal are appropriate for judicial notice.”).

11. Moreover, under Federal Rule of Evidence 201(b), a court may take judicial notice of a fact that “is not subject to reasonable dispute,” because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Other MDL courts have invoked this authority to take judicial notice of sentencing hearing transcripts and press releases published by the Antitrust Division, in ruling on motions to dismiss. *See In re Automotive Parts Antitrust Litig.*, No. 12-md-02311 (E.D. Mich. June 6, 2013) (Dkt. No. 122)

(granting request for judicial notice of criminal information, sentencing hearing transcript, and Antitrust Division press release regarding civil defendant, noting that “[t]he Court is satisfied that the documents meet the requirements of Rule 201(b).”).

WHEREFORE, Plaintiffs respectfully request that, when evaluating the defendants’ motions to dismiss in this action, the Court take judicial notice of the attached documents from the *CSAV* Criminal Action and the *K Line* Criminal Action.

Dated: December 12, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on December 12, 2014, a true and correct copy of the foregoing instrument was electronically served upon all counsel of record.

/s/ Warren T. Burns  
Warren T. Burns